1-0900-6039-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HEALTH

In the Matter of the Revocation of the Manufactured Home Park License of Gordon Hedlund, Shafer Mobile Home Park, 1991 License No. 1218.

RECOMMENDATION FOR SUMMARY DISPOSITION

The above-entitled matter is before the undersigned Administrative Law Judge on the parties' cross-motions for summary disposition. The Department filed its intitial motion on January 9, 1992, to which the Licensee replied on January 28, 1992. Each party then filed a memorandum on February 14, 1992 and a reply on February 21, 1992.

John F. Bonner III, Parsinen, Bowman & Levy P.A., Attorneys at Law, 100 South Fifth Street, Suite 1100, Minneapolis, Minnesota 55402 submitted the motion on behalf of the Licensee, Gordon Hedlund. Paul G. Zerby, Special Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103 submitted the motion on behalf of the Minnesota Department of Health (hereinafter "the Department" or MDOH). The record closed on these cross-motions on February 21, 1992, the date reply memoranda were filed.

Based on the record herein, and for the reasons set out in the attached Memorandum,

IT IS HEREBY RECOMMENDED THAT:

1. The Licensee's Motion for Summary Disposition be DENIED.

2. The Department's Motion for Summary Disposition be GRANTED.

3. The Commissioner's final disposition be stayed for thirty (30) days to permit Licensee to seek judicial review of the September 5, 1991 resolution of the City of Shafer.

4. If the Licensee seeks judicial review of the September 5, 1991 resolution, the Department's final decision be stayed indefinitely, pending a judicial determination of the Licensee's dispute with the City.

Dated: March ___, 1992.

GEORGE A. BECK

Administrative Law Judge

MEMORANDUM

In 1987, Respondent sought and received assistance from the City of Shafer (hereinafter "the City") in obtaining a license from the Department to operate a mobile home park. The assistance given pertinent to this case consists of permission to use the City's "fire barn" and the mayor's basement as emergency shelters for park residents and an agreement that a volunteer firefighter would respond to unlock the fire barn. Having received this permission, the Licensee submitted a plan to the City which called for evacuating the park residents to these sites in emergencies. The City approved this plan at some point in 1987.

Having received the City's approval of the emergency evacuation plan, the Department granted the license to operate the Schafer Mobile Home Park in 1987. The licensee does not have an emergency shelter and relied upon the evacuation plan to provide a place of shelter for park residents. Either a shelter or an evacuation plan is required under Minn. Stat. § 327.20, subd. 1(7). That statutory provision reads as follows:

A manufactured home park with ten or more manufactured homes, licensed prior to March 1, 1988, shall provide a safe place of shelter for park residents or a plan for the evacuation of park residents to a safe place of shelter within a reasonable distance of the park for use by park residents in time of severe weather, including tornados and high winds. The shelter or evacuation plan must be approved by the municipality by March 1, 1989. The municipality may require the park owner to construct a shelter if it determines that a safe place of shelter is not available within a reasonable distance from the park. A copy of the municipal approval and the plan must be submitted by the park owner to the department of health.

Minn. Stat. § 327.20, subd. 1(7).

On September 5, 1991, the Shafer City Council passed a resolution rescinding the Council's approval of the evacuation plan. The resolution gives the following reasons for that action:

1) The fire barn is presently used for storage and lacks sufficient space to shelter all the park residents.
2) The fire barn is structurally insufficient to serve as a storm shelter.
3) Volunteer firefighters are no longer available to unlock the fire barn at all hours.
4) The distance between the mobile home park and the fire barn renders travel between them in a storm unwise and unsafe.

Department Memorandum, Exhibit 3.

The resolution acknowledged that a new fire hall had been built, but finds that its construction and location render the new building unsuitable as a storm shelter. The City now has a new mayor and the former mayor's basement is no longer available for use as a shelter. Since September 5, 1991, the Licensee has neither constructed a storm shelter for park residents, nor received approval from the City for a new evacuation plan.

The parties do not dispute the foregoing facts. The Licensee maintains that he relied upon the City's approval of the evacuation plan and the Department's granting of a license to operate in locating the park in Shafer. The Licensee also asserts that the City received a direct benefit from the park's construction, namely piped natural gas service. The Licensee alleges that the City's action in rescinding approval of the evacuation plan is motivated by an ongoing dispute with the Licensee over water rates. On the basis of these assertions, Licensee argues that the City of Shafer is estopped from rescinding its approval, and that the Department is estopped from taking adverse action on the license.

Summary Disposition.

Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Sauter v. Sauter, 70 N.W.2d 351, 353 (Minn. 1955); Louwagie v. Witco Chemical Corp., 378 N.W.2d 63, 66 (Minn.App. 1985). Summary disposition is the administrative equivalent to summary judgment and the same standards apply. Minn. Rule 1400.5500(K). In a motion for summary disposition, the initial burden is on the moving party to show facts that establish a prima facie case and assert that no material issues of fact remain for hearing. Theile v. Stich, 425 N.W.2d 580, 583 (Minn. 1988). Once the moving party has established a prima facie case, the burden shifts to the non-moving party. Minnesota Mutual Fire and Casualty Company v. Retrum, 456 N.W.2d 719, 723 (Minn.App. 1990).

The facts surrounding the Department's issuance of the license are undisputed. Thus, application of the statute will determine whether the Department's action is authorized and summary judgment in its favor is appropriate. If the Department's actions are not authorized under Minn. Stat. § 327.20, subd. 1(7), the Licensee is entitled to summary disposition in his favor. If the license action is authorized, Licensee's estoppel claim must be examined to determine whether that summary disposition is appropriate.

MDOH Actions under Minn. Stat. § 327.20, Subd. 1(7).

The Department is authorized to revoke or suspend mobile home park operating licenses when the licensee fails to comply with the statutes governing park operation. Minn. Stat. § 327.18, subd. 1. Minn. Stat. § 327.20, subd. 1(7) expressly requires either a shelter or an evacuation plan must be provided for residents of a mobile home park. The shelter or the plan must be approved by the municipality by March 1, 1989. Minn. Stat. § 327.20, subd. 1(7). The municipality may require construction of a shelter if the municipality determines that a safe place of shelter is not

available to the park residents. Id. The Department asserts that the plain language of the statute requires a currently approved plan in this case. The Licensee argues

that the statute requires an approved plan as of March 1, 1989, and does not impose an ongoing requirement that the shelter or plan remain approved to comply.

Minn. Stat. § 327.20, subd. 1(7) is ambiguous as to whether an approved plan is an ongoing requirement. Where a statute is susceptible to two interpretations, legislative intent must be examined to determine the statute's meaning. Northern States Power Co. v. Donovan, 103 N.W.2d 126 (1960). Reading the shelter requirements for parks indicates that small parks of less than 10 manufactured homes must provide an approved plan or make a good faith effort to obtain approval of an evacuation plan. Minn. Stat. § 327.20, subd. 1(6). For parks (such as the Licensee's) with 10 or more homes licensed prior to March 1, 1988, a shelter or an approved plan is required. Minn. Stat. § 327.20, subd. 1(7). Municipal approval of the plan must be obtained by March 1, 1989. Id. Parks of 10 or more homes licensed after March 1, 1988, must have a shelter. Minn. Stat. § 327.20, subd. 1(8). Read together, a clear system of regulation is apparent. Small parks which might not be able to afford shelters are able to submit a plan, so long as the park owner submitted a reasonable plan and tried to obtain approval. Clauses 7 and 8, added in 1987, provide existing larger parks an option of either providing a shelter or an approved plan. Parks licensed after March 1, 1988, do not receive an option and must provide shelters for residents.

The interpretation proposed by the Licensee renders the deadline a "safe harbor" that upon compliance removes any further obligation on the Licensee. Thus, the City's approval on September 5, 1987, would serve throughout the duration of the license, without regard for changing circumstances. The Department's interpretation is that the requirement of an approved plan is an ongoing requirement. Under this interpretation, March 1, 1989, is a deadline for initial compliance with the approved plan requirement. If at any time subsequent to that date the plan is no longer approved, a licensee would be out of compliance with the statute.

The clear intent of the statutory scheme is to provide residents with either shelter from storms or a plan which permits residents to obtain shelter when required. There is no language in the statute to suggest that "paper compliance" is adequate to protect the safety of park residents. In each clause speaking to shelters, a plan must be in place. Only small parks are entitled to a good faith exemption and that exemption is only from plan approval. The 1987 adoption of clauses 7 and 8 had the effect of deleting the good faith exemption for larger parks. See In the Matter of the Revocation of the Manufactured Home Park License of Ardmor Associates, 1989 License 1073, at 2-3, OAH Docket No. 1-0900-3741-2 (Recommendation issued October 18, 1989).

The Licensee's interpretation would, in effect, reinstate the good faith exemption for large parks which was expressly removed by the Legislature. The ongoing requirement interpretation is further supported by the third sentence which authorizes the municipality to require a shelter be constructed if other shelter

is not available. The Administrative Law Judge concludes that an approved plan is an ongoing requirement. Therefore, failure to have an approved plan is a proper basis for adverse action against a park license by the Department.

The City's resolution determines "that the Shafer Terrace Manufactured Home Park does not have a safe place of shelter or an evacuation plan for park residents to a safe place of shelter within a reasonable distance of the park." Department Memorandum, Exhibit 3. That resolution does not expressly state that the Licensee must construct a shelter. Id. Minn. Stat. § 327.20, subd. 1(7) does not establish a process for revoking a municipality's approval of an evacuation plan. The Licensee argues that, under Minnesota law, it is improper to "read into" a statute a process that has not been expressed in the statute. State v. Corbin, 343 N.W.2d 874, 876 (Minn.App. 1984)(a court "cannot supply that which the legislature purposely omits or inadvertently overlooks").

However, "every statute is understood to contain by implication, if not by express terms, all provisions necessary to effectuate its object and purpose." Sullivan v. Credit River Township, 217 N.W.2d 502, 505 (Minn. 1974)(citing 17B Dunnell Dig. (3rd ed.) § 8949 and 82 C.J.S. Statutes § 327). The the purpose of the statute is to provide shelter or a plan which reasonably permits park residents to find shelter. Where a plan no longer permits park residents to find shelter, municipal revocation of previously granted approval must be implied to effectuate the statutory intent of Minn. Stat. § 327.20, subd. 1(7) under changing circumstances.

Estoppel Against the Department.

The Licensee maintains that the Department is estopped from taking adverse action against its license. The estoppel argument is grounded on the Licensee's receipt of a license from MDOH based upon the approved plan. Had the plan been assessed by the Department and found unacceptable, the Licensee would not have incurred substantial expenses by building the mobile home park. Instead, the Department merely accepted the plan, as approved by the City, and did not inquire as to the underlying elements of the plan.

The general law of estoppel is well settled. The Minnesota Supreme Court has stated:

To establish a claim of estoppel, plaintiff must prove that defendant made representations or inducements, upon which plaintiff reasonably relied, and that plaintiff will be harmed if the claim of estoppel is not allowed.

Brown v. Minnesota Department of Public Welfare, 368 N.W.2d 906, 910 (Minn. 1985).

Where the party to be estopped is a governmental agency, "some element of fault or wrongful conduct must be shown." Brown, at 906. Assisting a member of the regulated public to comply with requirements does not rise to the level of fault or wrongful conduct. Matter of Westling Mfg., Inc., 442 N.W.2d 328, 333 (Minn.App. 1989). Additionally, a party seeking to estop a governmental agency must demonstrate that equities of the case outweigh "the public interest frustrated by the estoppel ...." D.H.S. v. Muriel Humphrey Residences, 436 N.W.2d 110, 118

(Minn.App. 1989), rev. denied, April 26, 1989, (citing Mesaba Aviation Division v. County of Itasca, 258 N.W.2d 877, 880 (Minn. 1977)).

Here the Department has not taken any action which could be characterized as wrongful. MDOH received a license application which contained an evacuation plan approved by the local municipality. Indeed, since the plan was approved by the municipality the statute may have precluded the Department from denying the application on the basis of an inadequate plan. While the Licensee would not have constructed the park if the license application had been denied, this conduct is not sufficient to establish estoppel against the Department.

Estoppel Against the City.

Licensee has asserted that representations were made by City officials as to the availability and adequacy of shelter for park residents in City, which the Licensee relied upon in locating his park. Licensee has alleged that the cost of constructing a shelter in the park constitutes harm. The City's action in rescinding the plan was motivated, according to the Licensee, by an unrelated dispute. The Licensee also alleges that the situation underlying the approved plan has not changed.

The Judge lacks jurisdiction to decide the dispute between the Licensee and the City. If the Licensee seeks a determination that estoppel applies against the City or that the City acted arbitrarily, the case must be brought before the proper forum, district court. Ardmore Associates, at 4. In such instances, where the resolution of the judicial action will determine the administrative action, it is appropriate to stay the administrative action pending determination of the case in the other forum. Bill Johnson's Restaurants Inc. v. NLRB, 103 S.Ct. 2161, 2171-72 (1983).

To provide the Licensee an opportunity to resolve the judicial dispute without impairing the Department's duty to efficiently carry out its licensing functions, it is appropriate for the Commissioner to stay the effect of her order for a thirty day period. This stay will provide adequate time for the Licensee to pursue appropriate relief in a judicial forum. When the action is filed, the effect of the Commissioner's order should be stayed indefinitely, pending resolution of the judicial action. If the Licensee is successful in that action, he may move for dismissal of this adverse licensing action. If the action is not filed within thirty days, the Licensee may be deemed to have waived his claim of estoppel, for the purposes of the licensing action. This approach was suggested in a similar situation involving a mobile home park operating license. Ardmor Associates, at 4.

Based on the foregoing analysis, the Licensee's motion for summary disposition should be denied. The Department's motion for summary disposition should be granted, but the effect of the final disposition should be stayed for thirty days, and if a judicial action is filed within that time, the order should be stayed indefinitely pending resolution of the judicial action.

G.A.B.

To successfully resist a motion for summary disposition, the non-moving party must show that there are specific facts in dispute which have a bearing on the outcome of the case. Hunt v. IBM Mid America Employees Federal, 384 N.W.2d 853, 855 (Minn. 1986). General averments are not enough to meet the non-moving party's burden under Minn.R.Civ.P. 56.05. Id. Carlisle v. City of Minneapolis, 437 N.W.2d 712, 715 (Minn.App. 1988). However, the evidence introduced to defeat a summary judgment motion need not be admissible trial evidence. Carlisle, 437 N.W.2d at 715 (citing Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986)).

This assertion, put another way, is that the safety of park residents is not endangered by using the existing fire barn as an emergency shelter. These are genuine issues of material fact which, if proven, could constitute estoppel against the City. If the City is estopped from denying access to the fire barn and estopped from determining that a place of shelter is not available within a reasonable distance of the park, then there is no basis for the Department to suspend or revoke the Licensee's license to operate the park.